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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).No.57 OF 2004

Commissioner of Income Tax
Coimbatore-III. .. Appellant

Vs.

M/s.Pioneer Breeding Farms
Pongalur, Coimbatore District. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 24.7.2003 made in ITA No.1337/Mds/1996 for the assessment year 1992-93 against the order of the Commissioner of Income Tax (Appeals), Coimbatore dated 22/4/96 in ITA No.645-C,863-C,646-C & 864-C/95-96 against the order of the Commissioner of Income-Tax (Appeals) Coimbatore dt.18.5.95 in Appeal No.124-C/94-95 & 50-C/95-96 against the order of the Income -Tax Officer, Ward II (1)Tiruppur dt. 29.3.95 in PAN/GIR No.P.436/III (1)/TUP & dt. 10.1.96 in P.436/II (1)/Tup & dt. 17.11.95 in P-436/II (1) Tup/92-93.

For Appellant : Mr.Muralikumaran
Senior Standing Counsel (IT)

For Respondent : Mr.R.Venkatnarayanan
for M/s.Subbaraya Ayar

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 24.7.2003 made in ITA No.1337/Mds/1996 for the assessment year 1992-93, and is admitted on the following question of law:

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"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not liable for penalty under Section 271(1)(c) for concealment of income by way of understatement of the value of closing stock of hatching eggs to the tune of Rs.11,70,047/-?"

2. The Revenue is the appellant. The assessee filed his return of income for the assessment year 1992-93 admitting a total income of Rs.1,92,300/-. The assessment under Section 143(3) was completed on 29.3.1995 determining the total income at Rs.16,83,986/-. During the course of the assessment proceedings, it was found that the assessee was selling eggs that were found not fit for hatching at a nominal rate of 25 paise per egg. A survey at the assessee's premises also confirmed the said fact. It was found that the assessee had adopted a flat rate for the entire closing stock of hatching eggs at the rate of Rs.2.66 per egg. The Assessing Officer found that there was wide difference between the value admitted and the actual value and brought the difference amount, viz., Rs.11,70,047/-, to assessment. In view of the suppression in the sale of eggs and the difference in the value of the closing stock, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act, and being not satisfied with the explanation offered by the assessee, penalty of a sum of Rs.3,17,318/- was levied.

3. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals), contending that the valuation at the rate of Rs.2.66 per hatching egg was adopted as per the specific directions from the Chief Manager, Indian Bank, Variety Hall Road, Coimbatore, who had sanctioned a working capital loan to the assessee. The Commissioner of Income Tax (Appeals) confirmed the addition made by the Assessing Officer, however he opined that for the purposes of penalty proceedings, it could not be held that the assessee had suppressed or concealed any particulars. Accordingly, the Assessing Officer was directed to exclude the addition of Rs.11,70,047/- from the computation of penalty and confine to only the amount of Rs.25,000/- being the suppression of sale for levying penalty under section 271(1)(c) of the Act.

4. On appeal by the Revenue, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals). Hence, the present appeal raising the substantial question of law referred to above.

5. The learned Senior Standing Counsel appearing for the Revenue submitted that there was wide difference between the value admitted and the actual value and therefore, the Assessing Officer is right in adding the difference between the two figures to the total income of the assessee.

6. The learned counsel appearing for the assessee reiterating the submissions made before the Commissioner of Income Tax (Appeals) and Tribunal, justified the orders passed by the said authorities.

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7. Any addition on account of difference in stock can be made only on adequate materials, but not arbitrarily. Admittedly, there was a difference between the value of the closing stock declared to the bank and to the Income Tax authorities. The fact that the assessee valued the eggs at the rate of Rs.2.66 per egg merely based on the direction issued by the Indian Bank, Loans and Advances Department, Coimbatore dated 25.5.1992 is not disputed. In view of the same, there is no basis to treat the difference in value as the assessee's under-valuation of stock or undisclosed income.

Under such circumstances, there is no incertitude in coming to the conclusion that there is no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, we answer the question of law in favour of the assessee and against the Revenue and the appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:
1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "A", Rajaji Bhavan,
II Floor, Besant Nagar, Chennai.

2.The Commissioner of
Income Tax, Coimbatore.

3.The Commissioner of Income
Tax (Appeals), Coimbatore.

4.The Income Tax Officer,
Ward II (1) Tiruppur.

+1cc to Mr.M.Muralikumar, Advocate Sr 12004

KSJ (CO)
km.12.3.

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